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TORONTO...NOT TO BE RELEASED BEFORE JANUARY 29, 1985

Licensing by municipalities has resulted in the growth of a disorganized and unwieldy accumulation of bylaws, many of which conflict or are obsolete.

This is one of the key findings of a study conducted for the Ontario Economic Council. The study, REGULATION by MUNICIPAL LICENSING, was written by John Bossons, S.M. Makuch, and John Palmer, with an introduction by Peter Quance.

John Bossons is a member of the Department of Economics at the University of Toronto. Stan Makuch is a member of the Faculty of Law at the University of Toronto, John Palmer is a member of the Department of Economics at the University of Western Ontario, and Peter Quance, currently of Smith & Quance, law offices, in Greenfield, Ohio, was previously a research assistant at the Ontario Economic Council.

Basing their analysis upon municipal experience in Ontario, the authors envisage a reorganized system in which provincial and municipal powers will be exercised more rationally to deal with problems at the level which they tend to occur.

Municipal licensing serves a variety of regulatory purposes such as consumer protection and public health and safety.

This report reflects the views of the authors and not necessarily those of the Ontario Economic Council. The Council establishes policy questions to be investigated and commissions research projects, but it does not influence the conclusions or recommendations of authors. The decision to sponsor publication of this study was based on its competence and relevance to public policy and was made with the advice of anonymous referees expert in the area.

Overall, the primary purposes for government regulation are to compensate for market failure, to redistribute income, or to achieve social and cultural objectives.

This study points out that regulation has come to occupy such a prominent role in the economy because powerful forces such as interest groups have been able to wield enough influence to achieve regulation that is not necessarily in the larger public good.

'Frequently, the political process is skewed towards intervention, which often means more regulations.'

But the authors also say that despite the powerful forces in favour of regulation in the last decade, there also has been a reaction in favour of less regulation.

'Part of this new attitude may have originated in concern over the slowing of economic growth and the reduction in Canada's international competitiveness, which have helped contribute to higher levels of unemployment and inflation. Regulation has been blamed for shifting scarce resources away from uses that could improve productivity and foster innovation. Even in cases of market failure where some regulation is warranted, there has been the feeling that the amount of regulation has not been justified by the problem.'

The authors suggest that a more stringent evaluation of the cost effectiveness of various regulatory schemes could assist in moulding regulation into a more effective instrument.

They also suggest building greater public participation into the proceedings of regulatory bodies and restricting employment in the regulatory agencies.

'Once regulation is instituted, the self-interest of beneficiaries who operate the regulatory apparatus acts as a powerful incentive in favour of the status quo or even more regulation. Bureaucrats will see a continuation of regulation as employment insurance and a means of advancing in the governmental hierarchy. The natural inclination of regulatory agencies is to expand their horizons and increase their amount of regulation, so that they will be perceived as vigourously fulfilling their function and will be meeting the most common and discernible yardstick for measuring their performance.'

The study also points out that secondary industries such as lawyers and accountants are often employed on the basis of their expertise in a particular regulatory area.

'Naturally, their self-interest will dictate support for continued or expanded regulation.'

Frequently, the groups being regulated also will have a powerful economic stake in the continuation of regulation.

'Windfall gains occurring from barriers to entry, for example, tend to be quickly capitalized so that subsequent investments tend to realize relatively normal rates of return. If that industry is deregulated, huge capital losses would occur.'

This study questions the effectiveness of municipal licensing and concludes that it does not appear to be very effective when viewed in totality, except as an adjunct to provincial regulation.

The authors say it is a useful device to respond quickly to issues as they arise, since the legislative process at the municipal level is quicker than at the senior levels of government. They say it is also useful in serving, in a very minimal way, the goals of dealing with informational problems with externalities, with competency, quality, and quantity of

goods and services, with public morality and general market regulation, at a rather low cost to the community.

But the authors say municipal licensing is not a sophisticated independent regulatory scheme with its own integrated rationale. Nor can it, at present, successfully fulfill the purposes it seeks to achieve.

'The Municipality of Metropolitan Toronto indicates in an internal study that fourteen out of forty-seven businesses examined should no longer be regulated under the bylaw. The reason for this is that regulation of many of the businesses is an anachronism. A further reason is that in all fourteen of the businesses suggested for deregulation there is no active enforcement.'

The study concludes that municipal licensing in Metropolitan Toronto is not particularly effective on its own in fulfilling any of its purposes. The reasons for this failure do not arise from the internal administration of licensing there but rather are inherent in the current provincial conception of the role of licensing. *The potential ways in which municipal licensing may best provide a useful regulatory tool do not seem to have been systematically evaluated.*

The authors say Metropolitan Toronto has little ability to deal effectively with the purposes of licensing.

'There is no overall rational approach to its delegated regulatory powers in this area. The municipality is not granted jurisdiction over all trades or businesses, so it cannot deal with informational or externality problems in a comprehensive way. Although Bill 105 (proposed legislation) might seem to remedy this problem to a certain extent, it does so by allowing the Lieutenant-Governor in Council to designate by regulation a class or classes of business that municipalities cannot regulate; its primary effect is thus to transfer this designating power

from the provincial legislature to the provincial cabinet. Moreover, even with wide jurisdiction over different types of business there is no comprehensive authority (either in current legislation or in Bill 105) for municipalities to deal in a substantive way with those businesses. *There is no clear authority to deal with many aspects of informational problems and externalities because of overlaps in provincial and municipal jurisdiction.* As a result, municipal licensing has been limited to relatively marginal functions.'

The study goes on to say that Municipal licensing serves different functions at different times for different businesses, often responding in large part to relatively particular public concerns.

'It is makeshift, with no uniform rationale. In addition, it is administered at the municipal level by a commission that has no direct ties to the municipalities where much of the substantive municipal regulation occurs, i.e., zoning and planning, public health, and building inspection.'

The authors say there is potential for improvement in regulating efficiency through a better definition of the role and purpose of municipal licensing as a supplement to provincial controls.

'The legislation does not provide municipalities with an ability to deal comprehensively with information problems arising from business activity. The language of the legislation is not broad enough to allow for bylaws to be passed for the protection of consumers through regulating contractual relationships. Similarly, with respect to externalities and market regulation, there is nothing in the legislation that would permit a general, comprehensive and finely tuned approach to licensing. It is in part for this reason that other legislation has grown up at the provincial level to deal with consumer protection

in a more general way. The desirability of uniform regulation within the province with respect to civil and contractual rights is clearly also a consideration.'

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Regulation by Municipal Licensing, J. Bossons, S.M. Makuch, J. Palmer
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